

PATENT
Customer No. 22,852
Attorney Docket No. 09145.0021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,363,436)
Issue Date: April 22, 2008) Group Art Unit: 2189
Inventor: Tzong-Kwang Henry YEH et al.) Examiner: Horace L. FLOURNOY
Application No.: 10/808,253) Conf. No. 4222
Filed: March 23, 2004) 07/21/2009 CKHLUK 00000002 060916 10808253
For: COLLISION DETECTION IN A) 01 FC:1455 200.00 DA
MULTI-PORT MEMORY SYSTEM)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,363,436 (the '436 patent) on April 22, 2008, with a patent term adjustment (PTA) of 0 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA

petition was denied in a Decision mailed February 6, 2008. Applicants filed a Petition to Revive an Unintentionally Abandoned Application, including formal drawings, on February 20, 2008, creating an Applicant delay of 63 days for the late submission of formal drawings. The February 20, 2008 Petition was granted in a decision mailed March 20, 2008, and the application was forwarded to the Publications Branch for issuance, creating an Applicant delay of 232 days.

The '436 patent issued on April 22, 2008. The three year pendency date for determination of patent term adjustment is March 23, 2007, thereby creating a USPTO delay of 396 days.

Patentee first submits that the alleged 120 day Applicant delay created by the filing of an Information Disclosure Statement on October 1, 2007 is incorrect, and should not be considered an Applicant delay because Applicant did not file an Information Disclosure Statement. Instead, Applicant filed the October 1, 2007 Petition which included as an attachment, a copy of the March 24, 2006 Office Action including its accompanying Form 892 and Form SB-08 initialed by the Examiner ("the Forms"). The Forms were then incorrectly entered into the USPTO's system as an Information Disclosure Statement, erroneously creating an Applicant delay of 120 days. Because the alleged delay was created by USPTO processing errors, the patentee is entitled to not have this erroneous delay count against any patent term that the patentee is otherwise entitled.

Moreover, in view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 312 days which is the difference of the sum of 396